

## **Title 2 – Tribal Government**

### **Chapter 9 – Charter of Swinomish Fish Company**

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#### **Legislative History**

**Enacted:**

Ordinance 350 Amending Title 2, Chapter 9: Charter of Swinomish Fish Company and Ordinances 278 and 233 (8/13/15); BIA (8/28/15)  
Ordinance 333 Amending Title 2, Chapter 9: Charter of Swinomish Fish Company and Ordinance 278 (5/8/14); BIA (5/21/14)  
Ordinance 291 Amending Title 2, Chapter 9: Charter of Swinomish Fish Company and Ordinance No. 278 (6/7/11); BIA (6/13/11)  
Ordinance 278 Enacting Charter of Swinomish Fish Company (8/3/10); BIA (8/23/10)

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**2-09.010      Title.**

This Chapter shall be known as the “Charter of Swinomish Fish Company.”

[History] Ord. 278 (8/3/10).

**2-09.020 Authority.**

This Chapter is enacted pursuant to the authority of Article VI, Section 1(c), (h), (l), (m) and (s) of the Swinomish Constitution.

[History] Ord. 278 (8/3/10).

**2-09.030 Creation of Swinomish Fish Company.**

This Chapter creates the Swinomish Fish Company (the “Company”). The Company shall constitute a governmental instrumentality of the Tribe, separate and distinct from the Tribe, that can sue and be sued in its own name.

[History] Ord. 291 (6/7/11); Ord. 278 (8/3/10).

**2-09.040 Purpose.**

The Company is organized for the purpose of developing, constructing, owning, leasing, operating, managing, maintaining, promoting and financing seafood processing facilities and operations and Other Businesses (the “Businesses”) and engaging in any other lawful activity, subject to any limitations imposed by this Charter and any contract, indenture or other instrument by which the Company is bound.

[History] Ord. 278 (8/3/10).

**2-09.050. Name; Principal Place of Business.**

- (A) The name of the Company is Swinomish Fish Company.
- (B) The principal place of business of the Company shall be the Swinomish Reservation, Skagit County, Washington.

[History] Ord. 278 (8/3/10).

**2-09.060. Findings and Declarations.**

The Senate finds and declares:

- (A) Fishing, shell fishing, and fish and shellfish processing are vitally important to the economy of the Tribe and the general welfare of its members.
- (B) The ability of the Tribe to finance, develop, construct, operate and maintain certain Businesses will be enhanced by a separate entity which can provide the needed management and operations expertise to operate the businesses and to enter into the transactions and conduct the operations in connection with the Businesses.

- (C) The Company created by this Charter will be able to perform these functions and, as such, will be of benefit to the Tribe and its members.

[History] Ord. 278 (8/3/10).

#### **2-09.070 Relation to Tribe.**

- (A) The Company is a subordinate organization of the Senate of the Tribe. The Company is an arm and instrumentality of the Tribe but is a separate legal entity that enjoys an independent and autonomous existence. This Charter creates a corporate entity that is authorized to hold itself out as a Tribal corporation and use the abbreviation “Inc.” or other signifier of corporate status.
- (B) For purposes of taxation, civil jurisdiction and regulatory jurisdiction, the Company shall be deemed a subordinate arm of the Tribe and shall be entitled to all of the privileges and immunities of the Tribe; provided, that the Company shall sue and be sued in its own name.
- (C) The Company is intended to supersede and assume the duties, powers and obligations of any Tribal Entity previously established by the Tribe with respect to such entity’s duties, powers, privileges and obligations as they relate to the Businesses. The Company hereby assumes all obligations, powers, privileges, responsibilities and duties of the Tribe or any of its Tribal Entities with respect to the Businesses at the date of enactment of this Charter.
- (D) The Company shall have no power to exercise any regulatory or legislative power. The Tribe reserves from the Company all regulatory, legislative and other governmental power.
- (E) The Tribe by the adoption of this Charter and the establishment of the Company is not waiving the Tribe’s own sovereign immunity in any respect or consenting to the jurisdiction of any court.

[History] Ord. 291 (6/7/11); Ord. 278 (8/3/10).

#### **2-09.080 Definitions.**

For purposes of this Charter, certain terms are defined in the subsections that follow. When not inconsistent with the context, words used in the present tense include the future, words in the singular include the plural, words in the plural include the singular, and words in one gender include the other gender. The word “shall” is always mandatory and not merely directory.

- (A) “**Businesses**” means Tribal seafood processing facilities and operations and Other Businesses.
- (B) “**Chairperson**” means the Chairperson of the Management Board.

- (C) **“Charter”** means this Charter of Swinomish Fish Company.
- (D) **“Company”** means the Swinomish Fish Company created by this Charter.
- (E) **“Management Board”** means the Management Board of the Company created by this Charter.
- (F) **“Obligations”** means any notes, bonds, interim certificates, debentures or other evidences of indebtedness issued by the Company under this Charter.
- (G) **“Other Business”** means any business, enterprise or activity other than seafood processing facilities and operations which the Senate or the Management Board determines should be conducted by the Company, whether or not related to seafood processing facilities and operations.
- (H) **“Tribal Entity”** means an entity created or owned by the Tribe for economic or governmental purposes and any entity which is controlled by the Senate.
- (I) **“Tribe”** means, and **“Tribal”** refers to, the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized under Section 16 of the Indian Reorganization Act.
- (J) **“Senate”** means the Swinomish Tribal Senate, the governing body of the Tribe.

[History] Ord. 278 (8/3/10).

## **2-09.090 Assets of Company.**

The Company shall have only those assets of the Tribe that are formally assigned or leased to it by the Senate or by a Tribal Entity, together with whatever assets it acquires by other means as provided in this Charter. No activity of the Company or any indebtedness incurred by it shall encumber, implicate or in any way involve assets of the Tribe or another Tribal Entity not assigned or leased in writing to the Company.

[History] Ord. 278 (8/3/10).

## **2-09.100 Management of the Company.**

- (A) There is hereby established a Management Board of the Company the purpose of which is to carry out the duties and powers of the Company as set forth in this Charter.
- (B) The Swinomish Development Authority (“SDA”), appointed by the Senate pursuant to the SDA Charter, shall serve as the Management Board of the Company.
- (C) The Chairperson of the SDA shall serve as the Chairperson of the Management Board.

- (D) No member of the Management Board shall be liable to any creditor of the Company by reason of his or her status as a member, or by reason of acts done in the course of his or her official duties.

[History] Ord. 350 (8/13/15).

#### **2-09.110. Operation of Company.**

- (A) The Company shall conduct business pursuant to bylaws consistent with this Charter adopted by the Management Board and approved by the Senate.
- (B) The Company may have such officers as the bylaws may provide.
- (C) The Management Board will meet as often as necessary to conduct its business, but no less frequently than monthly. A majority of the members of the Management Board shall constitute a quorum for the transaction of business, but no Company actions shall be taken by a vote of less than a majority of the Management Board members. The Management Board shall keep complete and accurate records of all meetings and actions taken.
- (D) The Management Board shall keep full and accurate financial records, make periodic reports to the Senate and submit a complete annual report, in written form, to the Senate as required by the provisions of this Charter.
- (E) The members of the Management Board may receive a stipend for their services as provided by the bylaws. Members of Management Board shall be reimbursed for actual expenses incurred in the discharge of their duties, including necessary travel expenses.

[History] Ord. 278 (8/3/10).

#### **2-09.120 Perpetual Succession.**

The Company shall have perpetual succession in its chartered corporate name.

[History] Ord. 291 (6/7/11); Ord. 278 (8/3/10).

#### **2-09.130 [Reserved.]**

[History] Ord. 291 (6/7/11); Ord. 278 (8/3/10).

#### **2-09.140 Powers of Company.**

- (A) It is the purpose of this Charter to authorize the Company to do any and all things necessary or desirable in connection with the financing, development, construction, ownership, lease, operation, management, maintenance, and promotion of the Company and the Businesses, or in connection with any other activities conducted by the Company

and the Businesses, and to secure the financing and assistance necessary for such activities.

- (B) The Businesses shall be operated by the Company as provided in this Charter.
- (C) Subject to the limitations set forth in this Charter and other provisions of Tribal law, the Management Board shall manage and have complete control over the conduct of Company affairs and shall have the full power to act for and bind the Company. Such authority shall be exercised pursuant to the bylaws of the Company and, where appropriate, by duly adopted resolution.
- (D) Subject to the limitations set forth in this Charter and other Tribal law, the Company, by and through the Management Board acting on behalf of the Company, shall have the following powers which it may exercise consistent with the purposes for which the Company was established:
  - (1) to develop, construct, own, lease, mortgage, operate, manage, promote and finance the Businesses, including expansions and enlargements, and including the power to enter into leases and leasehold mortgages on lands held in trust by the United States for the Tribe;
  - (2) if the Management Board determines it to be in the best interests of the Company and the Tribe, to engage in other activities as determined by the Management Board;
  - (3) if the Management Board determines it to be in the best interests of the Company and the Tribe, to terminate the operation of any of the Businesses and to dispose of facilities related to that business;
  - (4) to have and use a corporate seal;
  - (5) to adopt, amend, or repeal bylaws, including emergency bylaws, relating to the business of the Company, the conduct of its affairs, the rights and powers of its Management Board and officers, subject to the approval of the Senate as provided in Section 2-09.110(A).
  - (6) to elect or appoint officers, employees and other agents of the Company, prescribe their duties and fix their compensation, and indemnify members, officers, employees and agents;
  - (7) to enter into, make, perform and carry out, cancel and rescind contracts, agreements and understandings for any lawful purpose pertaining to its business or incidental to the purposes for which it was established with any Federal, state, tribal or local governmental agency or authority or with any person, partnership, limited partnership, corporation, limited liability company, Tribal Entity, or other entity;

- (8) to lease property from the Tribe, a Tribal Entity or others for such periods as are authorized by law, and to hold, mortgage, manage or sublease the same;
- (9) to give guarantees and incur liabilities;
- (10) to obtain financing and refinancing, to borrow money at rates of interest as the Company may determine, to issue temporary long term indebtedness and to repay the same;
- (11) to mortgage or pledge assets and receipts of the Company as security for debts;
- (12) to agree to any conditions attached to Federal, state or local financial assistance or programs;
- (13) to purchase, receive, take by grant, devise, bequest or otherwise, lease or otherwise acquire, own, hold, improve, employ, use, and otherwise enjoy all powers necessary or appropriate to deal in and with, real and personal property, or an interest in real or personal property, wherever situated;
- (14) to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in any of its property or an interest in its property, wherever situated;
- (15) to employ contractors, consultants, attorneys and accountants;
- (16) to employ, discipline, and discharge employees and establish personnel policies and terms and conditions of employment;
- (17) to purchase insurance from any stock or mutual company for any property or against any risk or hazards;
- (18) to undertake and carry out studies and analyses of existing and potential Businesses;
- (19) to establish and maintain such bank accounts as may be necessary or convenient;
- (20) to participate with others in any corporation, partnership, limited partnership, limited liability company, or other association of any kind, in any transaction, undertaking, or agreement which the Company would have power to conduct by itself;
- (21) to sue and be sued in its corporate name in any court of competent jurisdiction; provided, that the United States Federal Courts are designated as among the courts of competent jurisdiction for all matters relating to Small Business Administration (SBA) programs including, but not limited to, 8(a) BD program participation, loans, and contract performance;

- (22) to consent to arbitration or alternative dispute resolution of any claim made by or against the Company; and
  - (23) to take such further actions as are commonly engaged in by public bodies of the character of the Company, that the Management Board may deem necessary, desirable or convenient to effectuate any or all of the purposes for which the Company is organized.
- (E) The Company, by contract or other instrument approved by the Management Board, may agree to limitations upon the activities in which the Company shall engage, in which event so long as such agreement is in effect the Company shall comply with such limitations.

[History] Ord. 291 (6/7/11); Ord. 278 (8/3/10).

**2-09.150 Reports to the Senate.**

(A) The Company shall prepare and submit to the Senate and the Management Board a monthly report within thirty (30) days after the close of each month, signed by the General Manager of the Company, showing:

- (1) a summary of the month's activities;
- (2) the financial statements and condition of the Company and of each of the Businesses;
- (3) any significant problems and accomplishments;
- (4) plans for the following periods; and
- (5) such other information as the Company deems pertinent or as requested by the Management Board or the Senate.

The Company shall review the report with the Management Board and, upon request, with the Senate.

(B) The Company shall prepare and submit to the Senate and the Management Board within forty-five (45) days after the close of each fiscal year an annual report, signed by the General Manager of the Company, showing:

- (1) a summary of the year's activities;
- (2) the complete statements and financial condition of the Company and of each of the Businesses;
- (3) any significant problems and accomplishments;



- (4) plans for the following year; and
- (5) such other information as the Company deems pertinent or as requested by the Management Board or the Senate.

The Company shall review the report with the Management Board and the Senate.

[History] Ord. 350 (8/13/15); Ord. 278 (8/3/10).

#### **2-09.160 Finances and Accounting.**

- (A) The fiscal year of the Company shall commence on June 1 of each calendar year and extend through May 31 of the next calendar year.
- (B) The quarters for Company reporting purposes shall be: 1<sup>st</sup> quarter – June 1 through August 31; 2<sup>nd</sup> quarter – September 1 through November 30; 3<sup>rd</sup> quarter – December 1 through the last day of February; 4<sup>th</sup> quarter – March 1 through May 31.
- (C) The Management Board shall establish and operate an accounting system that is in conformity with generally accepted accounting principles and that is necessary and advisable, in the reasonable discretion of the Management Board, in order to manage the assets of the Company. Such accounting system shall insure the availability of information as may be necessary to comply with federal, state and Tribal regulatory requirements.
- (D) The accounts and records of the Company shall be audited at the close of each fiscal year. Copies of such audit reports shall be furnished to the Swinomish Development Authority and the Senate.
- (E) The books, records and property of the Company shall be available for inspection at all reasonable times by authorized representatives of the Tribe.

[History] Ord. 333 (5/8/14); Ord. 278 (8/3/10).

#### **2-09.170 Personal Interest.**

- (A) During his or her tenure and for one year thereafter, no officer or employee of the Company, or any member of the Management Board, or any other public official who exercises any responsibilities or functions with respect to the Businesses, shall voluntarily acquire any interest, direct or indirect, in:
  - (1) the Company or any of the Businesses; or
  - (2) any property included or planned to be included in any of the Businesses; or

- (3) any contract or proposed contract relating to the Company or any of the Businesses.
- (B) If any member of the Management Board, officer or employee of the Company involuntarily acquires any interest described in sub. (A), above, or voluntarily or involuntarily acquired such interest prior to appointment or employment as a board member, officer or employee, such board member, officer or employee, in any event, shall immediately disclose his or her interest in writing to the Company. Such disclosure shall be entered into the minutes of the Company, and such member of the Management Board, officer or employee shall have sixty (60) days to dispose of such interest.
- (C) Any member of the Management Board, officer or employee who acquires or holds any interest described in subs. (A) or (B), above, shall not participate in any action by the Company relating to the property or contract in which she or he has an interest.
- (D) This section shall not be applicable to:
  - (1) the sale of fish or shellfish caught or harvested by the seller to the Company's seafood processing operation;
  - (2) the execution of agreements by banking institutions for the deposit or handling of funds in connection with the Company or any of the Businesses or to act as trustee under any trust indenture; or
  - (3) utility services the rates for which are fixed or controlled by a government agency; or
  - (4) membership in the Management Board of the Company as provided in this Charter.
- (E) The Management Board may, by resolution, waive any of the provisions of this Section.

[History] Ord. 278 (8/3/10).

#### **2-09.180 Severability.**

If any provision of this Charter or its application to any person or circumstance is held invalid, the remainder of this Charter, or the application of the provision to other persons or circumstances shall remain in effect.

[History] Ord. 278 (8/3/10).